

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 25928 of 2007(J)

OS.221/1989 of MUNSIF COURT, MAVELIKKARA

PETITIONER:

**P.N.RADHAKRISHNAN, PEROOR VEETIL,
ANJILIPRA MURI, KANNAMANGALAM VILLAGE.**

BY ADV. SRI.B.RENJITHKUMAR

RESPONDENT:

**V.VARGHESE, ATTUPURATHU VEETIL,
MATTOM VADAKKUM MURI,
KANNAMANGALAM VILLAGE.**

BY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

KSS

M.N.KRISHNAN, J

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W.P.(C) No.25928 OF 2007

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Dated this the 4th day of September 2007

JUDGMENT

The writ petitioner challenges the order of the Munsiff's Court, Mavelikkara in E.P.No.140 of 2005 in O.S.No.221 of 1989. The suit was one for realisation of an amount of Rs.17,534/- and it was originally dismissed by the learned Munsiff and in appeal, the Addl. District Judge, Mavelikkara granted a decree of Rs.5,440/- with 12% interest. In order to execute and realise the amount, an E.P. was filed by requesting the court for attachment and sale of immovable properties as well as for detention in civil prison. The property was attached and the judgment debtor filed serious objections. The principal objections were that he had discharged the decree debt after the passing of the decree and that he is only having a share over the property which is ordered to be attached and sold. In support of his contention, he examined CPW1 and CPW2. But strangely, the petitioner did not mount the box at all. It has to be understood that the judgment debtor has keenly contested the case and it was only in the appellate forum that the plaintiff got a decree for part of the amount. When such is the

situation and the attitude of the parties under ordinary circumstances, it cannot be believed that such judgment debtor will pay the amount to the decree holder even without obtaining a receipt. CPWs 1 and 2 when confronted with such a difficult situation also said that ordinarily there would have been receipts. But, in this case it was not there. The attitude of the judgment debtor in not entering into the box also adds to the same and therefore I fully agree with the view taken by the learned Munsiff in disbelieving the plea of discharge.

2. So far as the property is concerned, the contention of the judgment debtor is that the property belonged to the father and on his death he had only share over the property. The documents produced by the decree holder would show that the property was in the name of the judgment debtor. The court below went on to hold that even if it is admitted that the property originally belonged to the deceased father and since he died intestate, the judgment debtor will have a share. So the share of the judgment debtor can be attached and sold. The objections raised are considered by the court below and answered and it has to be remembered that the decree holder has been armed with a decree in a suit of 1989 and is still waiting to get the usufructs of the decree almost for two decades.

I do not find any ground to interfere with the order of the court below.

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Therefore the writ petition lacks merit and the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-